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Statement to the Subcommittee on the Constitution, Civil Rights and Civil Liberties
Committee on the Judiciary
For Hearing on H. R. 558 and H. R. 899,
Concerning African-American Farmers and corrections in the Pigford Class Action Lawsuit
June 21, 2007

On behalf of the more than 20,000 rural member families of the Federation of Southern Cooperatives/Land Assistance Fund, many of whom are African-American farmers and landowners, we are pleased to present testimony at this hearing on corrections in the Pigford Class Action Lawsuit.

The Federation staff assisted over 5,000 of our members across the rural South to file claims in the Pigford lawsuit by the deadline of October 12, 1999. We further assisted a similar number to file "late claims" in the case by the second deadline of September 15, 2000. We helped many of the late filers to submit affidavits explaining their reasons for filing late. We have also assisted our members in filing appeals for issues in the case with the Monitor, especially issues dealing with the identification of "similarly situated white farmers" which was a required element of a successful claim.

Of the 65,989 claimants who filed a late claim petitions by the September 15, 2000 deadline, only 2,119 petitions have been approved to allow claimants to file actual claims in the case. Another approximately 7,000 people filed their late claim within thirty (30) days of the late claim deadline. These 71,000 people received Tracking Numbers in the case, from the Facilitator in Portland, Oregon. Their names and addresses, at the time of their claim, are known and available in the case.

20,688 of the 65,989 late claim petitioners filed additional documentation with Michael K. Lewis, Arbitrator, in the form of a reconsideration of their petition to file a late claim and give additional information on their reasons for filing late, e. g., illness, family member's illness, lack of notice, lack of information, failure to sign their original petition, etc. Lewis approved only 141 of these petitions, turning down the overwhelming majority of 20,544 petitions.

Many farmers say that they did not receive adequate notice of the case in 1999 during the initial six months public notification period. This Subcommittee has held previous hearings that established that the notice given black farmers in this historic case was inadequate. Many farmers say they did not know of the case until the official claims period had ended.

The Federation because of our work with our constituent members in the case and work with the Chestnut, Sanders, Sanders law firm in Selma, Alabama, have been involved in every step of the case. We developed suggested legislation in 2005, which we entitled "The Black Farmers Judicial Equity Act of 2005", which we submitted to members of this Committee and other interested members of Congress, including our Congressman, Artur Davis from the Alabama 7th District. In our suggestions, we submitted a comprehensive set of recommendations to improve the situation and provide more equity for black farmers involved in the case.

We are here today to support H. R. 558, the "African American Farmers Benefit Act of 2007" because it incorporates most of the elements and recommendations proposed by the Federation to remedy the problems in the Pigford Class Action Lawsuit.

We support this legislation because it would provide a second chance for persons who filed claims in the Pigford Black Farmers Class Action Lawsuit but whose claims were never heard and adjudicated on their merits. The 71,000+ people who have been denied a hearing on their merits and potentially thousands of others who never received adequate notice of the case would be able to get their petitions and claims heard.

H. R. 558 preserves many of the advantages and benefits of the original Pigford Class Action Lawsuit by using it as the contextual framework for continuing reviews in the case. Farmers who apply for a Track A case would still get the benefits of the more lenient standards of proof of discriminatory treatment and documentation in Pigford. The provisions of H. R. 899 require farmers to go back to Federal court for redress with no certainty of the procedures, which will apply. This requirement also potentially will limit the number of claimants who can get their cases heard.

H. R. 558 provides a new notice requirement and procedures to inform perspective claimants of the case and the new opportunities to petition. The legislation provides for providing information on similarly situated white farmers needed to file successful complaints. The legislation provides for naming a new Monitor to provide independent oversight for the process in the case.

H. R. 558 also provides some remedies for ongoing discrimination by USDA since the filing of the Pigford v. Glickman lawsuit. The USDA is required to report information on loans from January 1, 1992 until the enactment of the legislation by race of the borrower to help determine patterns of discriminatory lending. The bill also prevents USDA from foreclosing on loans if the borrower makes a prima facie case to an adjudicator that the foreclosure is proximately related to discrimination by the U. S. Department of Agriculture. H. R. 899 does not have similar protective provisions for the claimants.

H. R. 588 could be strengthened by adding some of the provisions included in the Federation's suggested legislation, among them are:

- Provisions for providing attorney's fees and ways that attorneys can be paid for handling claims for late claim filers in this case; many of the original attorneys in the case have become discouraged by the payment system under Pigford;
- Provisions to allow persons whose petitions for Monitor review, under Pigford, that were filed late through no fault of their own, to get their petitions heard;
- Allow seven (7) Track B claimants, whose lawyer missed deadlines to have their claims heard;
- To suspend offsets during the claims process;
- To require that re-adjudications in the case be completed in six (6) months;
- To express the sense of Congress that the Administration should settle other USDA discrimination cases filed by Native American, Hispanic and women farmers.

More information on the positions of the Federation of Southern Cooperatives/Land Assistance Fund can be found on our Web site at: www.federation.coop. This includes The Black Farmers Judicial Equity Act of 2005 and our Position Paper on Pigford Legislation, dated March 2, 2007.